



The Family Court of the State of Delaware

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WILMINGTON, DELAWARE 19801-3736

Chandlee Johnson Kuhn
Chief Judge

INTERNAL POLICY MEMORANDUM NO. 06-003

TO: Family Court Judges
Family Court Commissioners
Family Court Administrative Team
Family Court Administrative Support Staff

FROM: Chief Judge Chandlee Johnson Kuhn /s/

DATE: March 17, 2006

RE: **License Restoration**

Section 516 of Title 13 of the Delaware Code as amended by the 143rd General Assembly commands the Family Court to create in consultation with the Division of Child Support Enforcement ("DCSE") rebuttable standards to restore Driver's, Business and Recreational Licenses which have been, or are proposed to be, suspended for noncompliance with a duty of child support.¹ Family Court has consulted with DCSE in an effort to create a comprehensive license suspension and restoration system designed to motivate and facilitate

¹ Section 516(h) of Title 13 states: "Notwithstanding any contrary provision of this chapter or Chapter 22 of this title, the Court may, in a pending proceeding related to child support, order the removal of any or all restrictions on licensed privileges proposed or imposed related to a failure to pay child support, and without regard to whether the suspension or revocation was a result of the action of the Court or the Division of Child Support Enforcement where the removal of such restrictions is in the best interests of the child or children) and the parties as it relates to the ability of the obligor to meet the obligor's parental obligations. The Court shall establish rebuttable standards in consultation with the Division of Child Support Enforcement to insure the uniform and equitable application of the license suspension program.

compliance with child support Orders. Pursuant to Section 915(f) of Title 10 and upon the approval of the Judges of Family Court, the following presumptive guidelines are enacted:

1. Whenever the Division of Child Support Enforcement (DCSE) or the Court has proposed, imposed or deferred a suspension of licensed privileges to coerce payment of child support (except incident to capias) and whether or not affirmatively pled, the Court in the context of a petition to enforce or modify a current support or arrears obligation may order the restoration of licensed privileges or the abatement of a proposed or deferred suspension where it is in the best interests of the child(ren) and the parties as it relates to the ability of the obligor to meet his or her parental obligations. This shall be presumed to have occurred when:
 - a. All arrears and retroactive support balances have been paid in full; or
 - b. The delinquency that precipitated the suspension was not caused by the obligor's own voluntary or wrongful conduct; or
 - c. Suspension or continued suspension will constitute a substantial hardship to the child and the support recipient; or
 - d. The equivalent of 6 monthly current support and arrears payments or 12% of the total arrears balance, whichever is greater and exclusive of tax intercepts, is received by DCSE within a single 30-day period; or
 - e. There is full and continuing compliance at least than 6 months, including the month prior to the Order of restoration, but if the required monthly payment is less than 2% of the total arrears balance, then for no less than 12 months.

If an obligor has multiple obligations, the requirements of subparagraphs (d) and (e) shall be considered in the aggregate.

2. Whenever the Court suspends licensed privileges for nonpayment of support by its own authority, the Court also may defer the suspension for up to six (6) calendar months upon condition of subsequent compliance. DCSE shall not propose or impose license suspension during the period of deferral. Upon initiative of the Court or upon motion of DCSE (or the support recipient if not a client of DCSE) filed during or within 30 days after the period of deferral and subject to the defenses in paragraph one (1), the Court may end the deferral and suspend the license in cases of substantial noncompliance, or extend the deferral for up to six (6) months in cases of partial compliance.
3. The burden of proof shall be on the party seeking restoration. Every restoration shall be supported by a factual basis in writing made or approved by a Commissioner. Every determination of license suspension, deferral or restoration shall be communicated directly to the DCSE license suspension office. If applicable, the Court shall contemplate any additional support obligations whether or not pending before the Court and every order shall apply universally to each individual.

4. The mere pendency of a child support action shall not limit the authority of DCSE to suspend or restore licenses. The Court shall not suspend or defer suspension of any license or take any other action regarding license suspension except as permitted by paragraph 1 if previously advised that the obligor has received a notice of proposed license suspension from DCSE or is currently subject to a DCSE license suspension payment plan. Neither the Court nor DCSE shall propose, defer or impose license suspension for 90 days following the child support related restoration of licensed privileges either by Court order or DCSE administrative action (unrelated to *capias*).
5. Any Commissioner may *sua sponte* or upon motion dismiss any action seeking child support modification filed within two and one-half years of the most recent determination of a current support obligation that fails to allege with particularity a substantial change of circumstance not caused by their own voluntary or wrongful conduct. Economic limitations caused solely by license suspension or other sanction imposed to coerce the payment of support shall not constitute an adequate change of circumstance to modify an obligation.

The policy is effective immediately.

CJK:lms